

9 February 1984

OGC 84-1453

MEMORANDUM FOR: Deputy Director, Office of Legislative Liaison

FROM: [REDACTED] (b)(3)  
Chief, Litigation & Legislation Division, OGC

SUBJECT: Impact of H.R. 3460, H.R. 4431 or S. 1324  
on Current FOIA Litigation

REFERENCE: Letter dated 2 February 1984, from  
Edward Boland, Chairman HPSCI, to  
Director of Central Intelligence

1. The reference requested the Agency to provide HPSCI with certain information in connection with hearings by the Subcommittee on Legislation on H.R. 3460 and other proposals to exempt certain CIA operational files from the search and review process of the Freedom of Information Act (FOIA). Specifically, you requested this Office to answer question (1) of the reference which reads: "List each pending FOIA case to which the CIA is a party and explain how and why each would be affected by passage of H.R. 3460, H.R. 4431, or S. 1324."

2. Attached is our analysis of the impact of the proposed FOIA legislation on active FOIA litigations involving the Agency. This analysis reflects our latest thinking on the impact of the bills on active litigations. It is important that this analysis not be misinterpreted by the Committee. First of all, the inclusion of any litigation in a particular category should not be interpreted as a commitment by the Agency with respect to future litigation strategy. The analysis is meant only to provide a general idea as to how various cases might be affected by the legislation. The analysis must be tentative because the legislation is not finalized and is subject to change as the legislative process proceeds. Additionally, it is impossible to give a more precise response without reviewing each and every document in each and every litigation. Many of the active litigations involve various kinds of documents derived from a variety of files. Thus an indication that a particular litigation would be affected by the legislation does not necessarily mean that the entire case would be affected. With these caveats in mind, the analysis responsive to this question is as follows:

Distribution:

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[REDACTED] (9 February 1984)

Impact of H.R. 3460, H.R. 4431 or S. 1324 on  
Current FOIA Litigation

I. FOIA/PA Litigation Which Would Not Be Affected by

Enactment of H.R. 3460, H.R. 4431 or S. 1324

|                                |                                 |
|--------------------------------|---------------------------------|
| <u>Afshar v. Dept of State</u> | C.A. No. 76-1421, D.D.C.        |
| <u>Black v. CIA</u>            | C.A. No. 83-3246, D.D.C.        |
| <u>Clark v. FBI</u>            | C.A. No. 78-2244, S.D.N.Y.      |
| <u>Cohen v. Turner</u>         | C.A. No. 77-3449, C.D. Cal.     |
| <u>Crooker v. CIA</u>          | C.A. No. 83-1426, D.D.C.        |
| <u>Davis v. CIA</u>            | C.A. No. 83-0505, E.D. Pa.      |
| <u>DeAntonio v. Turner</u>     | C.A. No. 75-761, D.D.C.         |
| <u>Deleruyelle v. Casey</u>    | C.A. No. 83-CV-8618, E.D. Mich. |
| <u>Elmquist v. CIA</u>         | C.A. No. 82-0047, D.D.C.        |
| <u>Ely v. CIA</u>              | C.A. No. 83-826, M.D. Fla.      |
| <u>Fellner v. DOJ</u>          | C.A. No. 75-C-430, W.D. Wis.    |
| <u>Hoffnung v. FBI</u>         | C.A. No. N-92-211, D. Conn.     |
| <u>Jaffe v. CIA</u>            | C.A. No. 79-1394, D.D.C.        |
| <u>Keith v. U.S</u>            | C.A. No. 83-2488, E.D. Mich.    |
| <u>Lasater v. CIA</u>          | C.A. No. 83-1128, D. Utah       |
| <u>Liberato v. CIA</u>         | C.A. No. 82-2661, C.D. Cal.     |
| <u>Mahshie v. DOJ</u>          | C.A. No. 82-1245, N.D.N.Y.      |
| <u>Marks v. CIA</u>            | C.A. No. 75-1735, D.D.C.        |
| <u>Muskett v. CIA</u>          | C.A. No. G83-759, W.D. Mich.    |
| <u>Sagona v. Miller</u>        | C.A. No. 83-2-1070, D. Colo.    |
| <u>Sagona v. Casey</u>         | C.A. No. 83-1304, D. Colo.      |
| <u>Salisbury v. FBI</u>        | C.A. No. 81-6361, S.D.N.Y.      |
| <u>Spock v. NSA</u>            | C.A. No. 79-4977, S.D.N.Y.      |

II. FOIA Litigation Which Would Not Be Affected  
by Enactment of H.R. 3460, H.R. 4431 or S. 1324

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| <u>Albertson v. DOJ</u>                    | C.A. No. 76-1302, D.D.C.    | FOIA - Documents disseminated outside the Agency         |
| <u>Allen v. DOD</u>                        | C.A. No. 80-0700, D.D.C.    | FOIA - Documents disseminated outside the Agency         |
| <u>Allen v. CIA</u>                        | C.A. No. 78-1743, D.D.C.    | FOIA - Attorney fees only remaining issue                |
| <u>Allen v. DOD</u>                        | C.A. No. 81-2543, D.D.C.    | FOIA - Communications between HSCA and CIA               |
| <u>Bevis v. CIA</u>                        | C.A. No. 83-0993, D.D.C.    | FOIA - Documents from files that would not be designated |
| <u>CNSS v. CIA</u>                         | C.A. No. 83-3090, D.D.C.    | FOIA - Documents from files that would not be designated |
| <u>Citizens Against UFO Secrecy v. CIA</u> | C.A. No. 83-2718, D.D.C.    | FOIA - Documents from files that would not be designated |
| <u>Crooker v. CIA</u>                      | C.A. No. 83-1717, D.D.C.    | FOIA - Fee waiver issue                                  |
| <u>Dettman v. DOJ</u>                      | C.A. No. 82-1108, D.D.C.    | FOIA - Documents disseminated outside of the Agency      |
| <u>Donovan v. CIA</u>                      | C.A. No. 83-479, S.D.N.Y.   | FOIA - Documents disseminated outside the Agency         |
| <u>Dunaway v. Kelley</u>                   | C.A. No. 77-0907, N.D. Cal. | FOIA - CIA documents no longer at issue                  |
| <u>Green v. DIA</u>                        | C.A. No. 82-101, D. Vt.     | FOIA - Documents disseminated outside the Agency         |
| <u>Hoch v. CIA</u>                         | C.A. No. 82-0754, D.D.C.    | FOIA - Documents from files that would not be designated |



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| <u>Miller v. Casey</u>            | C.A. No. 82-1101, D.D.C.    | FOIA - Alleged special activity - unacknowledged   |
| <u>Paisley v. CIA</u>             | C.A. No. 80-0038, D.D.C.    | FOIA - Documents from files that would not be designated   |
| <u>Peterzell v. DOS</u>           | C.A. No. 82-2853, D.D.C.    | FOIA - Documents remaining at issue would not be solely contained in files that would be designated                |
| <u>Rivkin v. CIA</u>              | C.A. No. 82-3721, E.D.N.Y.  | FOIA - CIA documents no longer at issue  |
| <u>Schlesinger v. CIA</u>         | C.A. No. 82-1749, D.D.C.    | FOIA - Documents involve acknowledged special activity   |
| <u>Sims v. CIA</u>                | C.A. No. 78-2251, D.D.C.    | FOIA - Subject matter involves Congressional investigation of alleged illegalities and improprieties               |
| <u>Thompson v. CIA</u>            | C.A. No. 83-1113, N.D. Ohio | FOIA - No CIA documents at issue in this case  |
| <u>Truitt v. DOS</u>              | C.A. No. 83-3592, D.D.C.    | FOIA - Partial Glomar as to one part of the request. Remaining documents have been disseminated outside the Agency |
| <u>U.S. Student Assoc. v. CIA</u> | C.A. No. 82-1686, D.D.C.    | FOIA - Subject matter involves acknowledged agency activity  |
| <u>Weiner v. FBI</u>              | C.A. No. 83-1720 C.D. Cal.  | FOIA - Documents disseminated outside the Agency   |

III. FOIA Litigations Thought To Involve Files  
Which May Be Designated

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| <u>Baxandall v. CIA</u>          | C.A. No. 82-8736, S.D.N.Y.    | FOIA - Certain documents come solely from files which could be designated                                      |
| <u>CNSS v. CIA</u>               | C.A. No. 80-1235, D.D.C.      | FOIA - Documents possibly still at issue in Count V come solely from files which could be designated           |
| <u>Daily Orange Corp. v. CIA</u> | C.A. No. 79-CV-411, N.D.N.Y.  | FOIA - Case does not involve a special activity. Could be affected if Glomar response not upheld               |
| <u>Fitzgibbon v. CIA</u>         | C.A. No. 79-0956, D.D.C.      | FOIA - Certain documents come solely from files which could be designated                                      |
| <u>Kapsa v. CIA</u>              | C.A. No. 2-78-1062, S.D. Ohio | FOIA - Case does not involve a special activity. Could be affected if glomar response not upheld               |
| <u>Mackenzie v. CIA</u>          | C.A. No. 82-1676, D.D.C.      | FOIA - Search and review not completed. Certain documents may come solely from files which could be designated |
| <u>McGehee v. CIA</u>            | C.A. No. 80-2997, D.D.C.      | FOIA - Certain documents come solely from files which could be designated                                      |
| <u>Meeropol v. Smith</u>         | C.A. No. 75-1121, D.D.C.      | FOIA - Certain documents could come solely from files which may be designated                                  |
| <u>Reader's Digest v. FBI</u>    | C.A. No. 79-4812, S.D.N.Y.    | FOIA - Certain documents could come solely from files which could be designated                                |
| <u>Roberts v. CIA</u>            | C.A. No. 83-6254, E.D.Mich    | FOIA - Certain documents come solely from files which could be designated                                      |

Shaw v. CIA

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C.A. No. 82-1603, D.D.C.  
C.A. No. 82-1625, D.D.C.  
C.A. No. 82-1667, D.D.C.  
C.A. No. 82-1832, D.D.C.  
C.A. No. 82-1833, D.D.C.  
C.A. No. 82-1903, D.D.C.  
C.A. No. 82-2388, D.D.C.  
C.A. No. 82-2389, D.D.C.  
C.A. No. 82-2410, D.D.C.  
C.A. No. 82-2681, D.D.C.

FOIA - Multi-Count  
Litigations seeking  
documents in support of  
Plaintiff's Kennedy  
Assassination conspiracy  
theories. Documents were  
not relied on by Warren  
Commission. Search and  
review not completed.  
Some documents may come  
solely from files which  
could be designated

Swike v. U.S.

C.A. No. H83-662, N.D. Ind.

FOIA - Certain documents  
come solely from files  
which could be designated

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